

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 2000-406-C - ORDER NO. 2001-020  
JANUARY 5, 2001

IN RE: Application of Enron Broadband Services,	)	ORDER
Inc. for a Certificate of Public Convenience	)	GRANTING
and Necessity to Provide Interexchange	)	CERTIFICATE FOR
Telecommunications Services	)	LONG DISTANCE
	)	AUTHORITY

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Enron Broadband Services, Inc. ("EBS" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate facilities-based interexchange access telecommunications services between and among locations within the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. § 58-9-280 (Supp. 1999), S.C. Code Ann. § 58-9-520 (Supp. 1999) and the rules and regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed EBS to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of EBS's Application and of the manner and time in which to file the appropriate pleadings for participation in the proceeding. The Company complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

A hearing was convened on December 5, 2000, at 2:30 p.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. Hayley B. Riddle and B. Craig Collins, Esquire, represented EBS. Scott Bolton testified on behalf of the Company. Jocelyn D. Green, Staff Counsel, represented the Commission Staff. Roy H. Barnette and James M. McDaniel presented testimony on behalf of the Commission Staff.

Bolton is the Director of Government and Regulatory Affairs at EBS. As Director of Government and Regulatory Affairs, Bolton manages public policy development and oversees all aspects of government outreach and regulatory compliance. EBS is an Oregon corporation and is a wholly-owned subsidiary of Enron Corporation, an energy and communications company. Enron Corporation's operations are conducted through its subsidiaries and affiliates. Some of the services Enron's subsidiaries and affiliates provide are the transportation of natural gas through pipelines to markets throughout the United States; the generation, transmission and distribution of electricity; and the development, construction and operation of power plants.

EBS plans to provide facilities-based intrastate interexchange access telecommunications services in South Carolina. The testimony reveals that EBS does not plan to provide local exchange service, basic local telecommunications service or switched access service. EBS is certified to provide its telecommunications services in thirty-one states. EBS is currently providing its services in Idaho, Oregon, Nevada, and Southern California.

Bolton's testimony addressed EBS' managerial, financial, and technical abilities to provide intrastate interexchange telecommunications services. According to the testimony, EBS has access to the technical, as well as the financial resources of its parent company, Enron

Corporation. Bolton's testimony reveals Enron has extensive experience in the telecommunications industry and is committed to utilizing the most advanced network design and transport techniques. EBS has approximately nine hundred employees, many of whom have significant experience in providing data and telecommunications services. The Company will bill its customers and EBS' name and customer service telephone number will appear on its bills.

According to Bolton, the backgrounds of EBS's key executives, combined with the telecommunications history of the Enron family of companies, demonstrate that EBS possesses the managerial qualifications required to provide interexchange access service. Some of the management personnel of EBS consist of the following persons: Joe Hirko (Chief Executive Officer), Ken Rice (Chief Commercial Officer), Kevin Hannon (Chief Operating Officer), Rex Shelby (President, Technology and Operations) and Steve Elliott (President, Global Network Development). Hirko led Enron's entrance into the eBusiness arena with the deployment of a Pure IP intelligent platform to enable eBusiness solutions. Hirko was previously employed with Portland General Electric (PGE). He negotiated the merger of PGE and Enron. Rice oversees all commercial departments within the Company including application delivery services and bandwidth intermediation services. Rice heads the Company's pioneering development of cash and forward markets for bandwidth to enable the trading of bandwidth as a commodity, as well as the Company's dark fiber and ISP sales channels. Prior to becoming Chief Operating Officer, Hannon was Chairman and CEO of Enron Global Risk Management, where he focused his efforts on building a successful bandwidth intermediation for Enron and providing global risk management oversight. Hannon has a Bachelor of Arts degree in Economics from LeMoyne College and a Masters in Business Administration from Cornell University.

The record reveals no state has ever denied EBS the authorization to provide intrastate service nor has any state ever revoked the certification of EBS or one of its affiliates. Additionally, according to Bolton, neither EBS nor any of its affiliates has ever been investigated or sanctioned by any regulatory authority for service or billing irregularities. EBS intends to meet all the service standards set by the Commission and comply with all Commission rules, statutes, and orders pertaining to the provision of telecommunications services in South Carolina.

Barnette testified as to his findings after reviewing the financial statements that were a part of the Company's filing. EBS filed a number of sets of financial statements with its Application including one for EBS and others for EBS' parent company Enron Corporation and its subsidiaries. The financial statements of EBS indicate it is a fairly strong company. EBS' balance sheet indicates retained earnings are positive and its income statement shows a profit of \$173.4 million. Retained earnings, which are positive on the balance sheet, also indicate that the Company has a history of profits. Barnette concluded that his review of the financial statements indicates EBS is in a good financial position to begin operations in South Carolina. Additionally, Barnette opined the financial statements of the parent indicate that Enron Corporation is a stable company and should be more than able to support EBS if needed.

The purpose of McDaniel's testimony was to present to the Commission the findings of the Utilities Department regarding the Application of EBS for a Certificate of Public Convenience and Necessity. Additionally, the purpose of McDaniel's review was to ensure that the Company's tariff complied with the Commission's regulations, policies and orders. McDaniel's testimony consist of comments and suggested modifications to the Company's tariff. Bolton testified that the Company will make all the changes to its tariffs as recommended by

McDaniel. Additionally, Bolton stated that the Company will amend Original Sheet 41, No. 10, Discontinuance and Restoration of Service, Section (C) Restoration of Service by adding the following sentence: “Re-establishment of service will be determined on a case-by-case basis.”

After full consideration of the applicable law, the Company’s application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

#### **FINDINGS OF FACT**

1. EBS is organized as a corporation under the laws of the State of Oregon and is authorized to do business as a foreign corporation in the State of South Carolina by the Secretary of State.

2. EBS operates as a facilities-based provider of interexchange services and wishes to provide its services in South Carolina.

3. EBS has the experience, capability, and financial resources to provide the services as described in its Application.

#### **CONCLUSIONS OF LAW**

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to EBS to provide facilities-based intrastate interexchange access telecommunications services.

2. The Commission adopts a rate design for EBS for its interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been

previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. EBS shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. EBS shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 1999).

4. If it has not already done so by the date of issuance of this Order, EBS shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations.

5. EBS is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's provision of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. EBS shall utilize the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If EBS changes underlying carriers, it shall notify the Commission in writing.

8. EBS shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports can be found at the Commission's web site at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms). The title of this form is "Annual Information on South Carolina Operations For Interexchange Companies and AOS". Be advised that the Commission's annual report for telecommunication companies requires the filing of intrastate revenues and intrastate expenses.

9. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. EBS shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's web site at [www.psc.state.sc.us/forms](http://www.psc.state.sc.us/forms); this Form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of message telecommunications services within the same LATA, EBS shall comply with the terms of Order No. 93-462, Order

Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dial parity rules established by the Federal Communications Commission, pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. The Company is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

12. This Order shall remain in full force and effect until further Order of the Commission.

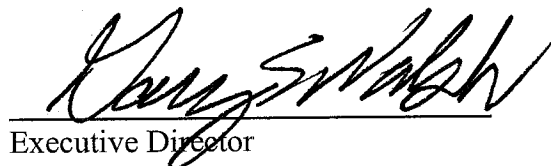
BY ORDER OF THE COMMISSION:



---

Chairman

ATTEST:

  
Executive Director

(SEAL)